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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,489	12/17/2003	David M. Kuchar	51900-KUCHAR-002	1488
34325	7590	05/02/2006	EXAMINER	
STANLEY H. KREMEN 4 LENAPE LANE EAST BRUNSWICK, NJ 08816			WATKINS III, WILLIAM P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1772

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Scholl (U.S. 2,633,440) or Udoh (U.S. 5,967,788).

See element Figure 3 of Scholl and Figure 2 of Udoh. Both references show tape type substrates with slits on opposite sides of the tape edges that form pennant and connector portions when the tapes are stretched.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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4. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholl (U.S. 2,633,440) or Udoh (U.S. 5,967,788) further in view of Kuchar (U.S. 5,244,715).

Scholl and Udoh teach expandable strips as notes above. Kuchar (co. 2, lines 1-10, element 20) teaches the use of end perforations and partially formed slits to keep a sheet together until final use and prevent tearing. The instant invention claims a tape with slits that are partially formed. It would have been obvious to one of ordinary skill in the art to have formed partial slits and end perforations in the sheets of Scholl and Udoh to prevent the sheet from opening till final use and to prevent tearing.

5. Claims 6, 8-11 and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The limitation of "y" shaped slits in claim 6 in combination with the other limitations of the claim, distinguish over the cited art. The limitation of edge slits, two on a side, followed by two on the opposite side in combination with

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the other limitations of claim 8 distinguish over the cited art. The limitation of one slit on one side followed by two slits on the opposite side in combination with the other limitations of claim 10, distinguish over the cited art. The examiner notes that the slits of Leech are not from the edge of a tape but instead are in the middle of a sheet.

6. Applicant's arguments filed 16 February 2006 and 6 February have been fully considered but they are not persuasive.

Applicant argues that Scholl and Udoh do not teach sheets with slits that form a series of pennants and connecting bands, but instead just teach a series of zigzags formed by connectors on both sides of a sheet. The examiner disagrees. The shapes of both Scholl and Udoh teach wedge shapes that are connected by bands at their upper portions that one could consider to be a type of pennant with edges of the bands that coincide with edges of the pennants. Applicant argues that the mere accidental appearance of being a pennant cannot anticipate the instant claims and cites *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45, 66 (1923). The phrase quoted by applicant was in regard to a reference that was said to anticipate a method of making paper at a high speed by modification of the pitch of a

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forming fabric in order to make a high quality paper. The court held that the reference in question may have taught the claimed pitch in a paper machine but there was no evidence that a product of high quality at the claimed speed was made except possibly by accident. The facts of the instant case differ from this situation. The instant claimed invention is a structure, not a process that produces a claimed result. The structure taught by the references is clear. The only question is the reasonableness of the examiner's claim construction. The examiner notes that while an application is under examination and the applicant is free to amend the claims, the examiner is required to use the broadest reasonable construction of the claims (MPEP 2111). As the structure of the cited references forms triangular shapes that may be printed upon the examiner considers it reasonable to consider them as pennants.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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William P. Watkins III

WW/ww

April 28, 2006

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**